

STATE OF MICHIGAN
COURT OF APPEALS

LEONARD GOODSON,

Plaintiff-Appellee,

v

SUBURBAN MOBILITY AUTHORITY FOR
REGIONAL TRANSPORTATION, a/k/a
SMART, MACOMB COUNTY ROAD
COMMISSION and DTE ENERGY,

Defendants,

and

CITY OF WARREN and MICHAEL GRAY,

Defendants-Appellants.

ROBIN ZOLLARS,

Plaintiff-Appellee,

v

MICHAEL GRAY and CITY OF WARREN,

Defendants-Appellants,

and

SUBURBAN MOBILITY AUTHORITY FOR
REGIONAL TRANSPORTATION, a/k/a SMART,
TERRY DELAINE TRAMMER, and DTE
ENERGY,

Defendants.

UNPUBLISHED

May 12, 2005

No. 253375

Macomb Circuit Court

LC No. 2002-003731-NO

No. 253376

Macomb Circuit Court

LC No. 2002-005314-NI

Before: Saad, P.J., and Fitzgerald and Smolenski, JJ.

FITZGERALD, J. (*concurring in part and dissenting in part*).

I respectfully disagree with the majority's conclusion that the trial court should have granted the city of Warren's motion for summary disposition.

MCL 691.1405, provides, in relevant part:

Governmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner

The majority concludes that the motor vehicle exception is not applicable because the government vehicle was not "physically involved in the collision, either by hitting plaintiffs' vehicle or by physically forcing that vehicle off the road or into another vehicle or object."

In *Robinson v City of Detroit*, 462 Mich 439, 445; 613 NW2d 307 (2000), our Supreme Court examined the statutory language "resulting from" in MCL 691.1405 in the context of a police chase. The Court stated:

The motor vehicle exception requires that a plaintiff's injuries result from the operation of a government vehicle. MCL 691.1405 Because there is no case law that has previously examined the phrase "resulting from" we turn to the dictionary. The *American Heritage Dictionary, Second College Ed*, p 1054, defines "result" as: "To occur or exist as a consequence of a particular cause[;] To end in a particular way [;] The consequence of a particular action, operation or course; outcome." Given the fact that the motor vehicle exception must be narrowly construed, we conclude that plaintiffs cannot satisfy the "resulting from" language of the statute where the pursuing police vehicle did not hit the fleeing car or otherwise physically force it off the road or into another vehicle or object. [*Robinson, supra* at 456-457 (footnotes omitted).]

Although *Robinson* involved a police chase, in *Curtis v City of Flint*, 253 Mich App 555, 560-562; 655 NW2d 791 (2002), this Court applied the holding in *Robinson* to claims involving the operation of a motor vehicle in other types of cases.¹

In so holding, the majority [in *Robinson*] emphasized that a narrow reading of the phrase "resulting from," as used in MCL 691.1405, requires a more

¹ The government vehicle in *Curtis* was an emergency paramedic vehicle. *Id.* at 557-558. The emergency vehicle was not physically involved in the accident. Rather, the plaintiff's vehicle struck another vehicle after the driver of the second vehicle abruptly changed lanes to allow the emergency vehicle to pass.

direct causal connection than the proximate cause "but for" analysis generally employed in cases alleging liability based on negligent conduct:

"The dissent suggests that there should be liability where a police vehicle forces an innocent intervening car to hit the fleeing vehicle causing injury to an innocent person in the fleeing vehicle. However, we do not believe such a scenario would fit within a narrow reading of the statutory requirement of "resulting from." The dissent's position would be more in accord with a proximate cause "but for" analysis. However, the statute does not say that governmental agencies are liable for injuries or property damage "proximately caused" by the negligent operation of a motor vehicle. Rather, the statute says the injuries or property damage must result from the negligent operation of a motor vehicle. Because the Legislature did not utilize proximate cause language, we will not import such analysis here. [*Robinson, supra* at 457 n 14.]"

While there is no question that the facts of *Robinson* involved a police chase, or that the Court referenced those facts as well as the facts of other similar cases at several points in its opinion, there is nothing in the analysis employed in *Robinson* to suggest that its holding is to be limited to cases involving police pursuit of a fleeing vehicle. Although other aspects of the Court's opinion hinged on policy considerations exclusive to police pursuits, i.e., whether the police owe a duty to passengers in a fleeing vehicle, see *id.* at 450-453, the holding of the Court on the question at issue here is broader. Because the statute allows liability only for injuries "resulting from" the negligent operation of a government-owned vehicle, as opposed to a lesser "but for" standard, the motor vehicle exception will not apply unless there is physical contact between the government-owned vehicle and that of the plaintiff, or the government-owned vehicle physically forced the plaintiff's vehicle off the road or into another vehicle or object. This interpretation of the language used by the Legislature in drafting the motor vehicle exception is not limited to police chases. Under the narrow reading given the exception by the Court in *Robinson*, the nature of the governmental vehicle's use is immaterial.

Accordingly, we conclude that the trial court correctly read *Robinson* to require that the emergency vehicle at issue here be physically involved in the collision that caused plaintiff's injuries, either by hitting plaintiff's vehicle or by physically forcing that vehicle off the road or into another vehicle or object.

I agree with the trial court that this case is distinguishable from both *Robinson* and *Curtis*. Both *Robinson* and *Curtis* involved emergency vehicles that were not directly involved in the accidents in question, and their alleged connections to the accidents were more attenuated than the relationship between the government vehicle and the motor vehicle accident in this case. Furthermore, although the Court in *Robinson* concluded that the motor vehicle exception was not implicated where the government vehicle did not hit the fleeing vehicle, physically cause another vehicle or object to hit the fleeing vehicle, or physically force the vehicle off the road or into another vehicle, *Robinson, supra* at 445, I do not read the Supreme Court's analysis of the phrase "resulting from" in MCL 691.1405 as limiting the applicability of the motor vehicle exception only to cases in which one of those factual scenarios are present.

In *Robinson, supra* at 456-457, the Court looked to the dictionary definition of the term "result" to define the phrase "resulting from" found in MCL 691.1405. The Court observed that "result" means "To occur or exist as a consequence of a particular cause[;] To end in a particular way [;] The consequence of a particular action, operation or course; outcome." *Id.* at 456. The Court's conclusion that the "plaintiffs cannot satisfy the 'resulting from' language of the statute where the pursuing police vehicle did not hit the fleeing car or otherwise physically force it off the road or into another vehicle or object," *id.* at 457, was not intended as a statement defining the scope of the motor vehicle exception, but as a statement expressing that the plaintiffs in that case could not satisfy the motor vehicle exception under the facts presented there.

Viewing the evidence in this case in a light most favorable to plaintiffs, the facts indicate that the government vehicle ran a red light at a major intersection, thereby forcing the bus driver, who was proceeding through the intersection on a green light and with the right of way, to quickly slam on his brakes to avoid colliding with the government vehicle, causing plaintiffs to be propelled forward on the bus. Despite the lack of physical contact, a reasonable jury could find from these facts that the accident that caused plaintiffs' injuries occurred as a consequence of proceeding through a red light at a busy intersection and, therefore, resulted from negligent operation of a motor vehicle. I would hold that the trial court properly denied the city of Warren's motion for summary disposition.

/s/ E. Thomas Fitzgerald